U.S. Department of Homeland Security
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Washington, D.C. 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 07 2009

SRC 07 800 18514

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Marie Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition (and the appeal), the petitioner was a research fellow at the CBR Institute for Biomedical Research (since renamed the Immune Disease Institute), a Harvard Medical School affiliate based in Boston, Massachusetts. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In a statement accompanying his initial submission, the petitioner described his research:

> My original work in the field of protein post-translational modification by SUMO [small ubiquitin-like modifier] has been one of the landmarks in the SUMO research field and has inspired and guided the current drug developments for fighting against SUMO-related diseases including diabetes, cancer and neurodegenerative diseases. My current research in the field of molecular mechanisms of integrins, which are cell adhesion receptors in immune cells, will greatly facilitate the developments of novel drugs to combat several devastating diseases, including AIDS, cancer, cardiovascular disease,

thrombi, arthritis and leukocyte adhesion deficiency (LAD). My work has been followed closely by other scientists from around the world. . . .

SUMO modification of cellular proteins has been shown to [be] involve[d] in regulation of many cellular functions such as gene expression, DNA repair and protein trafficking in cells. Abnormal SUMO modification has been linked to the pathogenic mechanisms of many life-threatening illness[es] including diabetes, cancer, neurogenerative diseases and viral infections. . . .

I have made significant breakthroughs in SUMO research. At that time, the SUMO signaling mechanism was an intriguing mystery to scientists in this field, and understanding of this mechanism was critical for developing anti-SUMO therapeutics for treatment of several diseases. I have identified the first SUMO-binding motif and my discovery has revolutionized people's understanding of SUMO signaling. . . .

My works have been followed up extensively and cited 98 times in primary researches published in internationally reputed journals such as Cell, Nature, and Oncogene. . . .

Currently I am working in [redacted]s lab, focusing on cell adhesion receptors, in particular integrins and their receptors. This is a crucial topic, as integrins are implicated in a number of severe diseases that affect millions such as cancer, AIDS and several other immune-related diseases. . . . Integrins are receptors for many viruses and bacteria, and as such are the target of many drug therapies. . . .

My current research has been focusing on the structural and molecular mechanisms of ligand recognition by integrins. . . . I have developed a novel protein expression system known as BacMan in [redacted]s lab and with such a robust expression system, this project has been greatly facilitated. . . .

My discoveries provide and will provide deep insights into the developments of new therapies to various SUMO- and integrin-related diseases. . . .

I have made some of the most significant discoveries concerning the mechanisms of SUMO signaling. My discovery of SUMO-binding motif has been widely recognized as being a significant breakthrough, has presented a new paradigm that explains the SUMO signaling mechanism and has provided a novel strategy to design therapeutic drugs against SUMO-related diseases. . . .

My outstanding qualifications and unique expertise have placed me as one of the top scientists in the field I work in.

The petitioner submitted several witness letters with the petition. Most of the initial witnesses have trained or worked with the petitioner. Professor [redacted] of Harvard Medical School, who

supervised the petitioner's postdoctoral fellowship at the CBR Institute, is a member of the National Academy of Sciences and the American Academy of Arts and Sciences, and a winner of the Crafoord Prize from the Royal Swedish Academy of Sciences. Prof. [redacted] stated:

> I have been recognized as a world authority in the field of adhesion receptors, especially of integrin receptors. . . .
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> I recruited [the petitioner] to join my laboratory in 2006 based upon his outstanding research background, especially in the area of biochemistry and biophysics and his sterling reputation among distinguished biomedical scientists. . . . Since [the petitioner] joined my lab, he has already made important contributions to our NIH-funded projects. . . . I have no doubt that his research will lead to an improved understanding of the pathology and treatment of inflammation related disorders, and provide guidance for the drug screen and development of many pharmaceutical companies. . . .
>
> I think he is, and will continue to be one of the top researchers in the field.

[redacted] of the University of Dundee, Scotland, stated:

> I have known [the petitioner] since we started our collaborations in 2003 on the research of enzymatic mechanism of SUMO modification pathway. As an internationally renowned expert in the SUMO field I know that this research is essential for understanding how SUMO modification is regulated in cells, how pathologically abnormal level of SUMO modification can occur in many diseases, and therefore providing insights into therapeutic development against SUMO-related diseases. [The petitioner] made significant contributions to this research. . . .
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> Another big question in this field is the SUMO signaling mechanism, i.e., how SUMO modification changes cellular functions. This remained an intriguing question until [the petitioner] made a seminar [*sic*] discovery of the SUMO-binding motif which is responsible for transducing SUMO signal in cells. This discovery opened the doors to the novel SUMO signaling mechanisms and inspired the new strategy to develop anti-SUMO medications. . . .
>
> Without any question, [the petitioner] is one of the top young biomedical scientists in the world today. He possesses unusually outstanding research abilities and a rich record of important discoveries in the field of protein modification by SUMO.

Independent witnesses include [redacted], assistant professor at Thomas Jefferson University, Philadelphia, Pennsylvania, who stated:

> I do not know [the petitioner] personally, having met him briefly only once. . . .

> [The petitioner] utilized the most advanced biomedical technologies to study the mechanism of SUMO function and made breakthrough contributions to our understanding of the way by which SUMO works in cells and to the development of novel therapeutic strategies against those diseases. Therefore, [the petitioner's] studies are crucial not only for basis research but also for pharmaceutical research and are of utmost importance. . . .
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> [The petitioner's] breakthrough discovery of the SUMO-binding motif . . . resolved the mystery in our field of how SUMO changes the properties and functions of cellular proteins, and therefore explained several findings connecting abnormal SUMO function to severe diseases. . . . This has become a seminal research paper in our field. It has been cited many times by other research papers, including almost all review articles on SUMO, indicating its significant impact in our field. . . .
>
> In my opinion, [the petitioner] has exceptional scientific expertise that is of the utmost value to the advancement of human health.

[redacted], assistant professor at Cornell University, Ithaca, New York, stated:

> I have no personal ties to [the petitioner] and I have never worked with him in the past. But I am fully aware of his achievement in SUMO signaling research. I also know his current significant contribution to the field of integrin research. . . .
>
> His creative research on structural basis of SUMO signaling was considered as a milestone in that field. . . . Very few biomedical scientists that I have known in this country have made such astonishing contributions as [the petitioner] has. . . .
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> [The petitioner's] extraordinary ability, past achievements and current role in health related projects have proved clearly that he has become an indispensable asset to the United States and his continued participation in these research projects is essential for the advancement of health care.

The petitioner's most prominent article appeared in 2004 in *The Proceedings of the National Academy of Sciences* (*PNAS*). A May 24, 2005 letter from the managing editor and deputy managing editor of *PNAS* stated: "The paper you published last year has been met with great enthusiasm. . . . Your article was among the top 100 articles accessed." The letter is a "form" letter, beginning with the salutation "Dear PNAS Author." Therefore, the letter itself contains no internal evidence that the petitioner is the recipient of the letter. Other evidence, however, supports the contention that the petitioner's *PNAS* article was particularly well-received. In addition to numerous witness letters that single out that article, the petitioner submitted citation data showing 47 citations of the article between its October 2004 publication and the filing of the petition in July 2007. In all, the record establishes 98 citations of the petitioner's articles, most of them independent.

On December 6, 2007, the director instructed the petitioner to establish that he has "conducted research greater or substantially different from his peers in this field of research." In response, the petitioner observed "the number of citations of [his] published research articles has increased from 98 to 136." The petitioner submitted partial copies of the citing articles to corroborate this assertion. The citations appear to indicate that other researchers rely on the petitioner's work at an accelerating rate. The petitioner also submitted statistics to show that his *PNAS* paper is highly cited in comparison to other articles published in that journal, which is in turn among the most highly-cited journals in the petitioner's field.

Several new letters accompanied the petitioner's response to the director's notice. None of the new witnesses were the petitioner's collaborators or mentors. Professor [redacted] of the California Institute of Technology, Pasadena, an investigator of the Howard Hughes Medical Institute, stated that the petitioner "is clearly an outstanding young scientist with unusually significant achievements in SUMO research. [The petitioner] has truly distinguished himself as an extraordinary scientist by his pioneering discovery and structural determination of the SUMO-binding motif."

[redacted], an associate professor at the University of Virginia, Charlottesville, selected one of the petitioner's articles "as a *Faculty of 1000* recommended article because this was unquestionably a breakthrough discovery with great potential impact. The *Faculty of 1000* is a very prestigious online scientific news website that highlights the most important work being done in a particular field, as selected by top scientists in that field."

[redacted] of Osaka University in Japan asserted that the petitioner is "widely known for his extraordinary work on the discovery of SUMO binding motif. . . . This paper was revolutionary, and a milestone in the SUMO field. . . . This fabulous work has been recognized as opening a new field of SUMO research and has been admired by many of the most distinguished researchers and scientists in this field."

[redacted] of Michigan State University, East Lansing, deemed the petitioner to be "a world recognized expert in protein biochemistry, structural biology and biotechnology of protein expression and purification."

The director denied the petition on February 6, 2008. The director's three-page decision contains only one direct reference to the petitioner's work (acknowledging that the petitioner "has made great strides as it relates to SUMO-binding"), and the director claimed "[t]he number of citations of publications the beneficiary has done is not unusual or greater than their peers have accomplished."

On appeal, the petitioner observes that he has documented "heavy independent citation [of his work] by scientists from around the world," and that he has submitted "independent evaluation letters . . . from the world-recognized experts in [the petitioner's] field." The AAO agrees with the petitioner that the director does not appear to have given due consideration to the strong evidence submitted in support of the petition. The petitioner has not merely shown that he is a productive researcher whose work has been well-received by his mentors. The petitioner has, rather, submitted substantial quantities of

objective evidence as well as opinions from established independent experts, attesting to the particular significance of the petitioner's work.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.